

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GARY FRIEDRICH ENTERPRISES, LLC, et al.,

Plaintiffs,

-against-

MARVEL ENTERPRISES, et al.,

Defendants.

08-CV-01533 (BSJ)(JEF)

**REPLY DECLARATION OF CHARLES KRAMER IN FURTHER SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO
COUNTERCLAIM PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Charles S. Kramer, declare under penalty of perjury as follows:

1. I am a principal of Riezman Berger, P.C. and I am duly admitted to practice in the states of Missouri and Illinois and the Eastern District of Missouri and have been admitted pro hac vice before this court. I and my firm, together with the law firms of Roth Evans, P.C. and Simon Lesser PC, are counsel to Plaintiffs /Counterclaim Defendants Gary Friedrich and Gary Friedrich Enterprises, LLC in this action.

2. This Declaration is submitted in support of Plaintiffs/Counterclaim Defendants response to Defendants/Counterclaim Plaintiffs Statement of Additional Facts and in support of Plaintiff's Reply Memorandum in Support of Summary Judgment.

3. Annexed hereto as Exhibit 56 is a true and correct copy of Exhibit 5 to the Deposition of Roy Thomas, conducted on April 12, 2011, which is cited in the accompanying Plaintiffs'/Counterclaim Defendants' Reply Memorandum of Law in Support of Plaintiffs/Counterclaim Defendants' Motion for Summary Judgment and in Reply and Response to Defendants Rule 56.1 Statement of Additional Material Facts.

4. Annexed hereto as Exhibit 57 is a true and correct copy of the Report and Recommendation of Judge Francis, dated June 26, 2009, Docket Number 28, which is cited in the accompanying Plaintiffs'/Counterclaim Defendants' Reply Memorandum of Law in Support of Plaintiffs/Counterclaim Defendants' Motion for Summary Judgment and in Reply and Response to Defendants Rule 56.1 Statement of Additional Material Facts.

5. Annexed hereto as Exhibit 58 is a true and correct copy of the Order adopting the Report and Recommendation of Judge Francis, dated April 30, 2010, Docket Number 34, which is cited in the accompanying Plaintiffs'/Counterclaim Defendants' Reply Memorandum of Law in Support of Plaintiffs/Counterclaim Defendants' Motion for Summary Judgment and in Reply and Response to Defendants Rule 56.1 Statement of Additional Material Facts

6. Annexed hereto as Exhibit 59 is a true and correct copy of the Order of Judge Francis, dated May 20, 2011, Docket Number 145, which is cited in the accompanying Plaintiffs'/Counterclaim Defendants' Reply Memorandum of Law in Support of Plaintiffs/Counterclaim Defendants' Motion for Summary Judgment and in Reply and Response to Defendants Rule 56.1 Statement of Additional Material Facts.

7. Annexed hereto as Exhibit 60 is a true and correct copy of Defendants Reply Memorandum of Law in Further Support of Motion to Dismiss, dated August 14, 2007, Docket No. 70, which is cited in the accompanying Plaintiffs'/Counterclaim Defendants' Reply Memorandum of Law in Support of Plaintiffs/Counterclaim Defendants' Motion for Summary Judgment and in Reply and Response to Defendants Rule 56.1 Statement of Additional Material Facts.

8. Annexed hereto as Exhibit 61 are true and correct copies of royalty checks paid to Friedrich, bates stamped MVL 00010077, 00010083, 00010084, 00010123-00010127,

00010129-00010136, which are cited in the accompanying Plaintiffs'/Counterclaim Defendants' Reply Memorandum of Law in Support of Plaintiffs/Counterclaim Defendants' Motion for Summary Judgment and in Reply and Response to Defendants Rule 56.1 Statement of Additional Material Facts.

9. Annexed hereto as Exhibit 62 is a true and correct copy of excerpts from the deposition of Gary Friedrich, conducted on April 1, 2011, which are cited in the accompanying Plaintiffs'/Counterclaim Defendants' Reply Memorandum of Law in Support of Plaintiffs/Counterclaim Defendants' Motion for Summary Judgment and in Reply and Response to Defendants Rule 56.1 Statement of Additional Material Facts.

10. Annexed hereto as Exhibit 63 is a true and correct copy of excerpts from the deposition of Michael Ploog, conducted on April 26, 2011, which are cited in the accompanying Plaintiffs'/Counterclaim Defendants' Reply Memorandum of Law in Support of Plaintiffs/Counterclaim Defendants' Motion for Summary Judgment and in Reply and Response to Defendants Rule 56.1 Statement of Additional Material Facts.

11. Annexed hereto as Exhibit 64 is a true and correct copy of excerpts from the deposition of Roy Thomas, conducted on April 12, 2011 and April 13, 2011, which are cited in the accompanying Plaintiffs'/Counterclaim Defendants' Reply Memorandum of Law in Support of Plaintiffs/Counterclaim Defendants' Motion for Summary Judgment and in Reply and Response to Defendants Rule 56.1 Statement of Additional Material Facts.

12. Annexed hereto as Exhibit 65 is a true and correct copy of the first three pages of "*Daredevil, the Man Without Fear*", produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MVL0027141-0027143 which is cited in the accompanying Plaintiffs'/Counterclaim Defendants' Reply Memorandum of Law in Support of

Plaintiffs/Counterclaim Defendants' Motion for Summary Judgment and in Reply and Response to Defendants Rule 56.1 Statement of Additional Material Facts.

13. Annexed hereto as Exhibit 66 is a true and correct copy of excerpts from the deposition of David George, conducted on April 14, 2011, which are cited in the accompanying Plaintiffs'/Counterclaim Defendants' Reply Memorandum of Law in Support of Plaintiffs/Counterclaim Defendants' Motion for Summary Judgment and in Reply and Response to Defendants Rule 56.1 Statement of Additional Material Facts.

14. Annexed hereto as Exhibit 67 is a true and correct copy of excerpts from the deposition of Paul Schade, conducted on March 31, 2011, which are cited in the accompanying Plaintiffs'/Counterclaim Defendants' Reply Memorandum of Law in Support of Plaintiffs/Counterclaim Defendants' Motion for Summary Judgment and in Reply and Response to Defendants Rule 56.1 Statement of Additional Material Facts.

15. Annexed hereto as Exhibit 68 is a true and correct copy of excerpts from the deposition of Stan Lee, conducted on May 4, 2011, which are cited in the accompanying Plaintiffs'/Counterclaim Defendants' Reply Memorandum of Law in Support of Plaintiffs/Counterclaim Defendants' Motion for Summary Judgment and in Reply and Response to Defendants Rule 56.1 Statement of Additional Material Facts.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 14, 2011

Respectfully submitted,

By: 

Charles S. Kramer

CERTIFICATE OF SERVICE

I hereby certify that the above pleading was filed electronically with the Clerk of the Court using the CM/ECF system this 14th day of November, 2011, which will send notification to all those entitled to receive such notice.

/s/ Charles S. Kramer